

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.18140 of 2022

Arising Out of PS. Case No.-22 Year-2021 Thana- GOVERNMENT OFFICIAL COMP.
District- Patna

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Praveen Singh, S/o Shyamendra Kumar R/o village- Flat No. 3D, Aakritis
Pranjal, S.K. Puram, Lane No. 15, Arya Samaj Mandir, Bailey Road Patna,
P.S.- Danapur, District- Patna.

... .. Petitioner/s

Versus

The Union of India, Narcotics Control Bureau, Patna Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Pushkar Narain Shahi, Sr. Advocate Mr. Manoj Kumar, Advocate
For Union of India	:	Mrs. Punam Kumari Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

2 26-07-2022 Heard Mr. Pushkar Narain Shahi, learned Senior
Counsel on behalf of the petitioner and Mr. Gaurav Singh,
learned counsel for the Narcotics Control Bureau.

2. Let the defect(s) be removed within four weeks of
the complete start of the physical Court in normal course.

3. The petitioner is in judicial custody in connection
with N.D.P.S. Case No.139 of 2021 arising out of F. No.
NCB/PZU/V/22/2021 instituted under Section 8(c)r/w 20(b)(ii)
(A)/22(C)/29 of N.D.P.S. Act.

4. As per the prosecution story, it is alleged that the



Narcotics Control Bureau got information that the petitioner herein is going to book a parcel containing LSD. Upon information, the Zonal Director, NCB, Patna was informed, a raiding team was constituted and after following all the necessary guidelines, the officials took position at DTDC Office at Saguna More.

5. When the petitioner arrived at the said place, he was intercepted and his name was inquired. Further allegation is that the parcel booked by the petitioner was taken out by the Manager and was opened in the presence of the independent witnesses. It is further been alleged that five ruling blank papers having LSD blots weighing 0.08 grams was recovered/seized.

6. Further upon his disclosure of having booked one more envelope, the team visited Ramjaipal Nagar Post Office from where they got information that it has been despatched to RMS (NSH), Patna Junction. The team thereafter reached RMS and after apprising the official, took charge of the said envelope. Upon opening the said envelope, eleven blots of LSD weighing 0.21 gram as also 1.51 gram of '*charas*' were recovered/seized in the presence of the independent witnesses. It is further alleged that the petitioner made statement under Section 67 of the NDPS Act disclosing that he is involved in the alleged blots



and '*charas*'. It was in the aforesaid circumstance that the FIR No.NCB Crime/Case No.22 of 2021 was instituted on 28.09.2021 and the petitioner was arrested.

7. Learned Senior Counsel for the petitioner has submitted that:

(i) the allegation against the petitioner of possession of 0.29 grams of LSD stamps and 1.51 grams of '*Charas*' at the DTDC Office or the RMS Patna Junction are concerned; it is not the prosecution case that he was in conscious possession of the said article;

(ii) the said quantity falls within the category of small quantity which was seized in the form of a stamp and not in crystal form. Thus, if weighing of paper is excluded, only then the actual weight could be ascertained;

(iii) the statement taken under Section 67 of the NDPS Act cannot be stated to be a voluntary statement taken by the NCB officials;

(iv) till date it has not been confirmed that the contraband was actually LSD;

(v) the two seizure list witnesses are full brothers and they have made the petitioner the scapegoat.

8. Per contra, learned counsel for the NCB supporting



the prosecution story submits that the envelope was booked by the petitioner at DTDC Office which contained 0.08 grams of LSD and further on his information another envelope was seized from RMS, Patna Junction containing 0.29 grams of LSD stamps and 1.5 grams of 'Charas' and as such he cannot escape his involvement in the case. He has further brought on record an order of Bombay High Court dated 29.11.2021 in **Hitesh Hemant Malhotra vs. The State of Maharashtra in Cri. Bail Application No.352 of 2020** which held as follows:

“the weight of blotter paper is an integral part of contraband seizure done by any agency and the paper ought to be included while weighing Lysergic Acid Diethylamide (LSD) for prosecution under the NDPS Act”

9. He as such submits that 0.29 grams of LSD comes under commercial quantity much above the prescribed 0.1 grams. He denied the coercion on the part of the NCB Office regarding the statement made under Section 67 of the NDPS Act. He has further brought on record the report of the CRCL, New Delhi received on 30.05.2022 which according to counsel for the NCB is as under:



“Each of the two samples is in the form of cut piece of paper strip (Blotting paper). On the basis of Chemical and Chromatographic Examination, it is concluded that each of the two samples under reference answers positive test for LSD”.

10. Learned Senior Counsel for the petitioner on the other hand has brought the attention of this Court to an order passed by the Kerala High Court at Ernakulam in **(Akash vs. State of Kerala & Anr.)** in **Appeal No.2652 of 2021** disposed of on 07.05.2021.

11. In the said case it was held:

“though after swallowing the piece of paper, which causes release of drug but since that paper only carries drug and facilitates its consumption, the paper with LSD drops, as a whole, is neither “preparation”, within the meaning of Section 2(xx), nor in a “mixture” within the meaning of the NDPS Act.” It further held that as per the Chemical Analyzer’s report, shows quantity of LSD drops solution was 0.4128 milligrams, which was below 0.1 gm of commercial quantity.”



12. It is important to note that as per the table/chart present in the NDPS Act, 0.002 gram comes within the category of small quantity whereas 0.1 gram is the commercial quantity.

13. Admittedly, from the two envelopes that were seized and alleged to have been dispatched from the DTDC office and Ram Jaipal Nagar Post Office, by the petitioner herein; altogether 0.29 gram of LSD stamps beside 1.5 grams of ‘Charas’ were recovered/seized.

14. Considering the fact that there has been recovery of 0.29 grams of LSD and 1.5 grams of ‘charas’ by the NCB authority from the petitioner following the tip off from the two envelopes from the DTDC Office, Saguna More, Patna and RMS Office, Patna Junction, Patna, and the fact that the 0.29 gram LSD comes within the category of commercial quantity; this Court for the present is not inclined to extend the privilege of bail to the petitioner which is accordingly rejected.

(Rajiv Roy, J)

Prakash Narayan /-

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